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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/022,576	12/17/2001	Hans-Ullrich Schmidt	3993.004	6169

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EXAMINER

DEL SOLE, JOSEPH S

ART UNIT	PAPER NUMBER
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1722

DATE MAILED: 01/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/022,576

Applicant(s)

SCHMIDT ET AL.

Examiner

Joseph S. Del Sole

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3 and 5-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3 and 5-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1, 3 and 5-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP0243516 in view of St. Eve (3,890,083).

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EP (0,243,516) teach a coextrusion nozzle arrangement including a distributor portion 1 adjacent an extruder for delivery of an extrudate, a nozzle portion 4, 7a, 7b, 6b for the extrusion of the extrudate which includes two extrudate flows, a mounting and connecting base 3 between the distributor portion 1 and the nozzle portion, whereby the mounting and connecting base 3 is shaped and constructed for holding the nozzle portion in a predetermined installation arranged by a clamp 5 which is maintained relative to the distributor portion 1 during the dismantling of the mounting and connecting base 3 together with the nozzle portion. The mounting and connecting base 3 includes the connecting channel for connecting the channels in the distributor portion 1 with the channels in the nozzle portion, and the distributor portion 1 and the nozzle portion include channel extensions which bridge a spacing between these portions due to the size of the mounting and between connecting base 3 (see fig. 1). The mounting and installation base 3 includes several annular disks with intermediate annular connecting conduit gaps interrupted by webs 18, for the passage of extrudate (see 3). Holes 15 and bolts 12 define a tensioning means for fastening the mounting and connecting base 3 to the distributor portion 1 and define a centering arrangement for centering the mounting and connecting base 3 to the distributor portion. A second centering member 14 aligns and centers the nozzle portion relative to the mounting and connecting base 3.

EP (0,243,516) fails to teach the sealing means as recited by the instant claims.

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St. Eve discloses gaskets 11 for preventing leaks between components of extrusion dies. Note that the gaskets will develop a larger sealing force or action when interior pressure is applied from the mounting screws of the apparatus.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to modify the invention of EP(0,243,516) with gaskets because such a modification would prevent leaks as disclosed by St. Eve.

Response to Arguments

5. Applicant's arguments filed 12/24/03 have been fully considered but they are not persuasive.

The Applicant argues that the EP (0243516) reference fails to teach or suggest every element of the claims as now recited.

The Examiner agrees; due to the limitations added to claim 1, EP(0243516) must be combined with St. Eve.

The Applicant argues that St. Eve fails to show connecting channels and that the sealing rings do not have any immediate reference to the feed channel. And further, "the flow channels of the mounting and connecting base and the flow channels of the distributor portion are sealed to the ambient by the inventive arrangement of the sealing means. Whereas the sealing rings of the reference are only intended to ensure sealing between the single components of the die."

The Examiner disagrees. St. Eve is not recited to teach structural recitations of the claimed apparatus. Rather, St. Eve is merely used to show that sealing means are

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notoriously well known in the extrusion art and further that it is obvious to use sealing means in the extrusion apparatus of EP(0243516).

The Applicant argues that a skilled artisan would not have combined the elements of the prior art without hindsight reasoning.

The Examiner disagrees. EP(0243516) teaches the structure of the apparatus, but merely fails to explicitly teach seals between the separable parts. It would have been obvious to place seals between separable parts in order to prevent leakage because St. Eve teaches seals for this purpose. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Correspondence

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Joseph S. Del Sole whose telephone number is (571) 272-1130. The examiner can normally be reached on Monday through Friday from 8:30 A.M. to 5:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ms. Wanda Walker, can be reached at (571) 272-1151. The official fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306 for both non-after finals and for after finals.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Joseph S. Del Sole

J.S.D.
January 25, 2004

[Signature]
ROBERT DAVIS
PRIMARY EXAMINER
GROUP 1300-1722

1/20/04